

## **Title V Program Statute**

The following is an excerpt of the Higher Education Act of 1965, as Amended by the Higher Education Amendments of 1998.

### **SEC. 501. FINDINGS; PURPOSE; AND PROGRAM AUTHORITY.**

(a) FINDING. -- Congress makes the following findings:

- (1) Hispanic Americans are at high risk of not enrolling or graduating from institutions of higher education.
- (2) Disparities between the enrollment of non-Hispanic white students and Hispanic students in postsecondary education are increasing. Between 1973 and 1994, enrollment of white secondary school graduate in 4-year institutions of higher education increased at a rate two times higher than that of Hispanic secondary school graduates.
- (3) Despite significant limitations in resources, Hispanic-serving institutions provide a significant proportion of postsecondary opportunities for Hispanic students.
- (4) Relative to other institution of higher education, Hispanic-serving institutions are under funded. Such institutions receive significantly less in State and local funding, per full-time equivalent student, than other institutions of higher education.
- (5) Hispanic-serving institutions are succeeding in educating Hispanic students despite significant resources problems that--
  - (A) limit the ability of such institutions to expand and improve the academic programs of such institutions; and
  - (B) could imperil the financial and administrative stability of such institutions.
- (6) There is a national interest in remedying the disparities described in paragraphs (2) and (4) and ensuring that Hispanic students have an equal opportunity to pursue postsecondary opportunities.

(b) Purpose. -- The purpose of this title is to--

- (1) expand educational opportunities for, and improve the academic attainment of Hispanic students, and;
- (2) expand and enhance the academic offerings, program quality, and institutional stability of colleges and universities that are educating the majority of Hispanic college students and helping large number of Hispanic students and other low-income individuals complete postsecondary degrees.

(c) Program Authority. -- The Secretary shall provide grants and related assistance to Hispanic-serving institutions to enable such institutions to improve and expand their capacity to serve Hispanic students and other low-income individuals.

### **SEC. 502 DEFINITIONS; ELIGIBILITY.**

(a) Definitions. For the purpose of this title:

(1) EDUCATIONAL AND GENERAL EXPENDITURES. The term "educational and general expenditures" means the total amount expended by and institution for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and an mandatory transfers that the institution is required to pay by law.

(2) ELIGIBLE INSTITUTION. The term "eligible institution" means--

(A) an institution of higher education--

- (i) has an enrollment of needy students as required by subsection (b);
- (ii) except as provided in section 512(b), the average educational and general expenditures of which are low, per full time equivalent undergraduate student, in comparison with the average educational and general expenditures per full time equivalent undergraduate student of institutions that offer similar instruction;
- (iii) that is--

(I) legally authorized to provide, and provides within the State, an education program for which the institution awards a bachelor's degree or

(II) a junior or community college;

(iv) that is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or that is, according to such an agency or association, making reasonable progress toward accreditation;

(v) that meets such other requirements as the Secretary may prescribe; and

(vi) that is located in a State; and

(B) any branch of any institution of higher education described under subparagraph (A) that by itself satisfies the requirements contained in clauses (i) and (ii) of such subparagraph. For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor described under subparagraph (A)(i) shall be given twice the weight of the factor described under subparagraph (A)(ii).

(3) ENDOWMENT FUND.-- The term "endowment fund" means a fund that

(A) is established by State law, by a Hispanic-serving institution, or by a foundation that is exempt from Federal income taxation;

(B) is maintained for the purpose of generating income for the support of the institution; and

(C) does not include real estate.

(4) FULL-TIME EQUIVALENT STUDENTS.--The term "full-time equivalent students" means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours or all part-time student divided by 12) at such institution.

(5) HISPANIC-SERVING INSTITUTION. -- The term "Hispanic-Serving institution" means

(A) is an eligible institution

(B) at the time of application, has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and

(C) provides assurances that not less than 50 percent of the institution's Hispanic students are low-income individuals.

(6) JUNIOR OR COMMUNITY COLLEGE. The term "junior or community college" means an institution of higher education--

(A) that admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(B) that does not provide an educational program for which the institution awards a bachelor's degree (or an equivalent degree); and

(C) that--

(i) provides an educational program of not less than 2 years in duration that is acceptable for full credit toward such a degree; or

(ii) offers a 2-year program in engineering, mathematics or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding the application of basic engineering, scientific, or mathematical principles of knowledge.

(7) LOW INCOME INDIVIDUAL.-- The term "low-income individual" means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

(b) Enrollment of Needy Students.-- For the purpose of this title, the term "enrollment of needy students" means an enrollment at an institution with respect to which--

(1) at least 50 percent of the degree students so enrolled are receiving need-based assistance under title IV in the second fiscal year preceding the fiscal year for which the determination is made (other than loans for which an interest subsidy is paid pursuant to section 428); or

(2) a substantial percentage of the students so enrolled are receiving Federal Pell Grants in the second fiscal year preceding the fiscal year for which determination is made compared to the percentage of students receiving Federal Pell Grants at all such institutions in the second fiscal year preceding the fiscal year for which the determination is made, unless the requirement of this paragraph is waived under section 512(a).

## SEC. 503 AUTHORIZED ACTIVITIES.

(a) TYPES OF ACTIVITIES AUTHORIZED. Grants awarded under this title shall be used by Hispanic-serving institutions of higher education to assist the institutions to plan, develop, undertake, and carry out programs to improve and expand such institutions' capacity to serve Hispanic students and other low-income students.

(b) AUTHORIZED ACTIVITIES. Grants awarded under this section shall be used for one or more of the following activities:

- (1) Purchase, rental or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.
- (2) Construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities.
- (3) Support of faculty exchanges, faculty development, curriculum development, academic instruction, and faculty fellowships to assist in attaining advanced degrees in the fellow's field of instruction.
- (4) Purchase of library books, periodicals, and other educational materials, including telecommunications program material.
- (5) Tutoring, counseling, and student service programs designed to improve academic success.
- (6) Funds management, administrative management, and acquisition of equipment for use in strengthening funds management.
- (7) Joint use of facilities, such as laboratories and libraries.
- (8) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector.
- (9) Establishing or improving an endowment fund.
- (10) Creating or improving facilities for Internet or other distance learning academic instruction capabilities, including purchase or rental of telecommunications technology equipment or services.
- (11) Establishing or enhancing a program or teacher education designed to qualify students to teach in public elementary schools and secondary schools.
- (12) Establishing community outreach programs that will encourage elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education.
- (13) Expanding the number of Hispanic and other underrepresented graduate and professional students that can be served by the institution by expanding courses and institutional resources.
- (14) Other activities proposed in the application submitted pursuant to section 504 that --
  - (A) that contribute to carrying out the purposes of this title
  - (B) are approved by the Secretary as part of the review and acceptance of such application.
  - (C) Endowment fund limitations. --
    - (1) Portion of a grant. -- A Hispanic-serving institution may not use more than 20 percent of the grant funds provided under this title for any fiscal year for establishing or improving an endowment fund.
    - (2) Matching required. -- A Hispanic-serving institution that uses any portion of the grant funds provided under this title for any fiscal year for establishing or improving an endowment fund shall provide from non-Federal funds an amount equal to or greater than the portion.

## SEC. 504-- DURATION OF GRANT

(a) Award Period.

(1) In General. The Secretary may award a grant to a Hispanic-serving institution under this title for 5 years.

(2) Waitout Period. --

A Hispanic-serving institution shall not be eligible to secure a subsequent 5-year grant award under this title until 2 years have elapsed since the expiration of the institution's most recent 5-year grant award under this title, except that for the purpose of this subsection a grant under section 514(a) shall not be considered a grant under this title.

(b) Planning grants. Notwithstanding subsection (a), the Secretary may award a grant to a Hispanic-serving institution under this part for a period of one year for the purpose of preparation of plans and applications for a grant under this title.

## SEC. 505. SPECIAL RULE

No Hispanic-serving institution that is eligible for and receives funds under this title may concurrently receive other funds under part A or B of Title III during the period for which funds under this title are awarded.

## PART B--GENERAL PROVISIONS

### SEC. 511. ELIGIBILITY; APPLICATION.

(a) Institutional Eligibility. Each Hispanic-serving institution desiring to receive assistance under this title shall submit to the Secretary such enrollment data as may be necessary to demonstrate that the institution is a Hispanic-serving institution as defined in section 502, along with such other data and information as the Secretary may be regulation require.

(b) Applications.

(1) Applications required. Any institution which is eligible for assistance under this subchapter shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate the institution's need for assistance. Subject to the availability of appropriations to carry out this title, the Secretary may approve an application for a grant under this title only if the Secretary determines that-

(A) the application meets the requirements of subsection (b); and

(B) the institution is eligible for assistance in accordance with the provisions of this title under which the assistance is sought.

(2) Preliminary Applications. -- In carrying out paragraph (1), the Secretary may develop a preliminary application for use by Hispanic-serving institutions applying under this title prior to the submissions of the principal application.

(c) Contents. A Hispanic-serving institution, in the institution's application for a grant, shall -

(1) set forth, or describe how the institution will develop, a comprehensive development plan to strengthen the institution's academic quality and institutional management, and otherwise provide for institutional self-sufficiency and growth (including measurable objectives for the institution and the Secretary to use in monitoring the effectiveness of activities under this subchapter);

(2) include a 5-year plan for improving the assistance provided by the Hispanic-serving institution to Hispanic students and other low-income individuals;

(3) set forth policies and procedures to ensure that Federal funds made available under this subchapter for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 501(b), and in no case supplant those funds;

(4) set forth policies and procedures for evaluating the effectiveness in accomplishing the purpose of the activities for which a grant is sought under this title;

(5) provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available to the applicant under this title;

(6) provide that the institution will comply with the limitations set forth in Section 516;

(7) describe in a comprehensive manner any proposed project for which funds are sought under the application and include--

(A) a description of the various components of the proposed project, including the estimated time required to complete each such component;

(B) in the case of any development project that consists of several components (as described by the institution pursuant to subparagraph (A)), a statement identifying those components which, if separately funded, would be sound investments of Federal funds only if funded under this title in conjunction with other parts of the development project (as specified by the institution);

(C) an evaluation by the applicant of the priority given any proposed project for which funds are sought in relation to any other projects for which funds are sought by the applicant under this title, and a similar evaluation regarding priorities among the components of any single proposed project (as described by the applicant pursuant to subparagraph (A));

(D) a detailed budget showing the manner in which funds for any proposed project would be spent by the applicant; and

(E) a detailed description of any activity which involves the expenditure of more than \$25,000, as identified in the budget referred to in subparagraph (E); and

(8) provide for making reports, in such form and containing such information, as the Secretary may require to carry out the Secretary's functions under this title, including not less than one report annually setting forth the institution's progress toward achieving the objectives for which the funds were awarded and for keeping such records and affording such access to such records, as the Secretary may find necessary to assure the correctness and verification of such reports; and

(9) include such other information as the Secretary may prescribe.

(d) Priority. With respect to applications for assistance under this section, the Secretary shall give priority to an application that contains satisfactory evidence that the Hispanic-serving institution has entered into or will enter into a collaborative arrangement with at least one local education agency or community-based organization to provide such agency or organization with assistance (from funds other than funds provided under this title) in reducing dropout rates for Hispanic students, improving rates of academic achievement for Hispanic students, and increasing the rates at which Hispanic secondary school graduates enroll in higher education.

(e) Eligibility Data. The Secretary shall use the most recent and relevant data concerning the number and percentage of students receiving need-based assistance under IV in making eligibility determinations and shall advance the base-year for the determinations forward following each annual grant cycle.

#### SEC. 512. WAIVER AUTHORITY AND REPORTING REQUIREMENT

(a) Waiver requirements; need-based assistance students. The Secretary may waive the requirements set forth in section 502(a)(2)(A)(I) in the case of an institution

(1) that is extensively subsidized by the State in which it is located and charges low or no tuition;

(2) which serves a substantial number of low-income students as a percentage of its total student population;

(3) that is contributing substantially to increasing higher education opportunities for educationally disadvantaged, underrepresented, or minority students, who are low-income individuals;

(4) which is substantially increasing higher educational opportunities for individuals in rural or other isolated areas which are unserved by postsecondary institutions;

(5) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of Hispanic Americans.

(b) Waiver determinations; expenditures-- (1) The Secretary may waive the requirements set forth in section 502(a)(2)(A)(ii) if the Secretary determines, based on persuasive evidence submitted by the institution, that the institution's failure to meet that criterion is due to factors which, when used in the determination of compliance with such criterion, distort such determination, and that the institution's designation as an eligible institution under part A is otherwise consistent with the purposes of this title.

(2) Expenditures--The Secretary shall submit to the Congress every other year a report concerning the institutions that, although not satisfying the requirements of section 502(a)(2)(A)(ii), have been determined to be eligible institutions under part A. Such report shall--

(A) identify the factors referred to in paragraph (1) which were considered by the Secretary as factors that distorted the determination of compliance with clauses (I) and (ii) of section 502(a)(2)(A); and

(B) contain a list of each institution determined to be an eligible institution under part A including a statement of the reasons for each such determination.

#### SEC. 513--APPLICATION REVIEW PROCESS

(a) Review panel.

(1) All applications submitted under this title by Hispanic serving institutions of higher education shall be read by a panel of readers composed of individuals selected by the Secretary and who include individuals representing Hispanic-serving institutions. The Secretary shall ensure that no individual assigned under this section to review any application has any conflict of interest with regard to that application which might impair the impartiality with which that individual conducts the review under this section.

(b) Instruction. All readers selected by the Secretary shall receive thorough instruction from the Secretary regarding the evaluation process for applications submitted under this title that are consistent with the provisions of this title, including--

- (1) an enumeration of the factors to be used to determine the quality of applications submitted under this title; and
- (2) an enumeration of the factors to be used to determine whether a grant should be awarded for a project under this title, the Secretary shall take into consideration the amount of any such grant, and the duration of any such grant.
- (c) Recommendations of panel. In awarding grants under this title, the Secretary shall take into consideration the recommendations of the panel made under subsection (a).
- (d) Notification. Not later than June 30 of each year, the Secretary shall notify each Hispanic-serving institution making an application under this title of
  - (1) the scores given the applicant by the panel pursuant to this section;
  - (2) the recommendations of the panel with respect to such application; and
  - (3) the reasons for the decision of the Secretary in awarding or refusing to award a grant under this title, and any modifications, if any, in the recommendations of the panel made by the Secretary.

#### SEC. 514--COOPERATIVE ARRANGEMENTS

- (a) General authority. The Secretary may make grants to encourage cooperative arrangements with funds available to carry out this title, between Hispanic-serving institutions eligible for assistance under this title and between such institutions and institutions not receiving assistance under this title, for assistance under this title, for the activities described in section 503 so that the resources of the cooperating institutions might be combined and shared in order to achieve the purposes of this title, to avoid costly duplicative efforts and to enhance the development of part A and part B eligible institutions.
- (b) Priority. The Secretary shall give priority to grants for the purposes described under subsection (a) whenever the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant Hispanic-serving institution.
- (c) Duration. Grants to Hispanic-serving institutions having a cooperative arrangement may be made under this section for a period as determined under section 505.

#### SEC. 516. LIMITATIONS

The funds appropriated under section 518 may not be used

- (1) for a school or department of divinity or any religious worship or sectarian activity;
- (2) for an activity that is inconsistent with a State plan for desegregation of higher education applicable to a Hispanic-serving institution;
- (3) for an activity that is inconsistent with a State plan of higher education applicable to a Hispanic-serving institution; or
- (4) for purposes other than the purposes set forth in the approved application under which the funds were made available to a Hispanic-serving institution.

#### SEC. 515. ASSISTANCE TO INSTITUTIONS UNDER OTHER PROGRAMS

- (a) Assistance eligibility. Each Hispanic-serving institution that the Secretary determines to be an institution eligible under this title may be eligible for waivers in accordance with subsection (b).
- (b) Waiver applicability
  - (1) In General-Subject to, and in accordance with, regulations promulgated for the purposes of this section, in the case of any application by a Hispanic-serving institution referred to in subsection (a) for assistance under any programs specified in paragraph (2), the Secretary is authorized, if such application is otherwise approvable, to waive any requirement for a non-Federal share of the cost of the program or project, or, to the extent not inconsistent with other law, to give, or require to be given, priority consideration of the application in relation to applications from other institutions.
  - (2) The provisions of this section shall apply to any program authorized by Title IV or section 604.
- (c) Limitation. The Secretary shall not waive, under subsection (b) of this section, the non-Federal share requirement for any program for applications which, if approved, would require the expenditure of more than 10 percent of the appropriations for the program for any fiscal year.

#### SEC. 517—PENALTIES

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of Federal financial assistance or grant pursuant to this subchapter embezzles, willfully misapplies, steals, or obtains by fraud any of the funds which are the subject of such grant or assistance, shall be fined not more than \$10,000 or imprisoned for not more than 2 years, or both.

#### SEC. 518--AUTHORIZATIONS OF APPROPRIATIONS

(a) Authorizations. -- There are authorized to be appropriated to carry out this title \$62,500,000 for fiscal year 1999, and such sums as may be necessary for each of the 4 succeeding fiscal years.

(b) Use of multiple year awards. In the event of a multiple year award to any Hispanic-serving institution under this title, the Secretary shall make funds available for such award from funds appropriated for this title for the fiscal year in which such funds are to be used by the institution.